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In the Supreme Court
of the United States

OCTOBER TERM 1972

No. 72-533

JOHN M. LUTTRELL,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITIONER'S REPLY TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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1. Respondent's November 8th, 1972 Memorandum to Petitioner's October 2d Petition does not appear to comply with Rule 24, Rules of The Supreme Court pertaining to the timely filing of an Answer, and should be stricken. The Sovereign should be held to the same procedural accountability required of petitioner.

2. The Sovereign's Solicitor avoided answering the pertinent constitutional questions arising by the Ninth Circuit imposing a one year time limitation on a new trial motion revealing pertinent, material and substantial evidence knowingly concealed by the Sovereign fiduciary to its benefit and destructive of the seaman petitioner's constitutional and statutory rights focusing a "fraud on the court" situation in an admiralty fiduciary relationship. The Memorandum was not responsive.

3. The Solicitor's statement that petitioner's attorney failed to raise the penalty assessment as an issue in the lower court is also a documented untruth emphasizing the Sovereign's marketing of untruths, now in this court. That issue was raised by counsel as a Constitutional impingement in Appellant's (petitioner herein) Brief No. 71-2640, Ninth Circuit on pages 14, 15, 16, 17 thus:

> "When the State establishes a principle of law and that principle limits the right of sincere dissent or reveals untruths inimical to the welfare of a person, then the protection of fundamental liberties under due process clause and the right of petition is abridged."

The Conclusion portion thereof is:

> "——and setting aside the penalty against counsel."

It is apparent that the Solicitor by lending his prestigious name and title to the Memorandum is joining with special counsel in the courts below by

continuing and advocating the purveying of untruths; so that this court be blindfolded to the facts, and thus continue the frauds upon the courts and plaintiff ranging from the District Court through the Supreme Court. This is a mockery of justice.

The ease by which people can be goaded into silence and submission is understandable in dictatorships where no one pretends the people have rights. But in a representative democracy, where the judiciary is free and lawyers act in compliance to their oath of office and responsibility to the courts, such behavior is incredible.

The Solicitor should be held to the same accountability for the presentation of truths and facts to this Court as counsel herein.

4. The Solicitor's statement that counsel should have specifically requested Commander Ronneberg's Inspection Book in essence and substance admits that such official record of the vessel existed and with the knowledge of special counsel. The only conclusion is that this official record was withheld by knowledgeable persons with designed aforethought because of the adverse and detrimental effect to the Sovereign's position because of the defaults revealed in Ronneberg's legacy of the truth.

This official document was strangely absent from the official coast guard file of which Commander Ronneberg was the custodian prior to trial. This document surfaced only after the suicide death of the Commander. The Solicitor's reasoning is alien to the

concept of maintaining official records and becomes aggravated when fiduciary responsibilities exist. Also revealed therein was the requirement by Ronneberg's superiors that his inspection of the vessel be expedited.

The Sovereign's special counsel ignored the statutory, case law teachings, and ethical requirements of government counsel pertaining to disclosure of the truth. The concealment was obviously prejudicial to the seaman ward. In gauging non-disclosure in terms of due process, the focus must be on the essentials of fairness and not upon the astuteness of either counsel, compare *Brady* v. *Maryland*, 373 U.S. 87 wherein this Court placed the focus on the deprivation of due process squarely upon the harm and not the motive of the government by inquiring (1) did the state have the evidence, and (2) was it substantial and material? Herein there is no doubt the Sovereign possessed the evidence and no doubt that it was substantial and material to the truth in that it revealed defaults of the vessel and in turn supported petitioners allegations of unseaworthiness and negligence.

Brady, supra, makes no distinction whether the evidence was negligently, accidentally or maliciously withheld. The Sovereign should not be permitted to virtuize their deficiencies. Government counsel are required to reveal the truth; and when untruths affecting rights of persons are revealed, government counsel have an obligation to make right that which has wronged a person.

It cannot be said that government counsel have

satisfied these fundamental requirements so that rudimentary constitutional demands of justice be achieved, and constitutional rights of a ward of admiralty be enforced.

That absence or concealment of witnesses or evidence was of concern to the Court, compare Judge Sobeloff in *Gardner* v. *National Bulk Carriers*, 310 F.2d 284 (4 Cir. 1962).

This concealment of evidence and withholding of pertinent and material information from the Court and plaintiff constitutes an offense against the court, party litigants and society.

4. The Solicitor states that methods of ingress and egress to the lifeboat were safe. The vessel's chief officer, in charge of the life boat drill testified as an adverse witness to the petitioner and revealed three methods of ingress and egress, characterizing these methods as unsafe and improper; (1) jumping from a 48 inch high cabin deck pipe rail outboard about 40 or so inches to the 2 inch wide lifeboat gunwale, there being no grab holds or safe footing provided, (2) slide down a greasy davit track or (3) pull one leg over the pipe rail, stand on a greasy cable parallel to the cabin deck and pull up into the life boat. He did not know of a safe way to enter and depart the lifeboat from the cabin deck level where the boat was worked. There was no prescribed book method, you got in and out the best you thought you could.

The failure of the shipowner to provide safe ingress and egress for crew members at the cabin deck

level *was a direct cause of Luttrell sustaining permanent injuries.* This was an obvious violation of the safety regulations and congressional directives that Ronneberg was required to enforce. The absence of the safety requirements were supported by the chief officer. He was authorized to represent the shipowner and make such admissions and speak on behalf of the owner. The physical facts are obvious. Stringent sanctions are imposed for violations; compare *Rogers* v. *Missouri Pac. R.R. Co.*, 352 U.S. 500, 508, 510; *Kernan* v. *American Dredging Co.*, 355 U.S. 431; *Davis* v. *Parker-Goodloe Co.*, 302 F.2d 489; *Cox* v. *Esso Shipping Co.*, 247 F.2d 629. In *Cox*, supra, the failure of the ship owner to comply with its heavy obligation to select and furnish seaworthy appliances could not thus be turned into a fault by a seaman; compare *Salem* v. *U. S.*, 370 U.S. 31.

This Court has consistently refused to apply limiting doctrines in FELA cases (violation of safety acts), compare *Davis* v. *Wolfe*, 263 U.S. 239.

5. The Solicitor states that according to petitioner's own testimony that the boat drill was completed. This is not supported by the testimony, nor the documented records in evidence. This, again, is an untruth presented by the Sovereign. Petitioner was responding to his boat drill duties. The task at hand and required for the imminent sailing of the vessel was the stowing of the lifeboat with provisions. This was a concurrent activity with the boat drill, a default of the vessel and a violation of the safety regulations required to have been enforced by Commander Ronneberg. Peti-

tioner was truthful and this was his nemises because the defaults were revealed. The Chief Officer testified that it was unusual to be stowing the boat during the drill. Shipowner's documentation reveals petitioner was injured while performing duties; compare *Warren* v. *U. S.*, 340 U.S. 523; *Vaughan* v. *Atkinson*, 369 U.S. 527; *Neal* v. *Saga Shipping Co.*, 407 F.2d 481, and *Johnson* v. *Griffiths SS Co.*, 150 F.2d 487 (9 Cir.) in which the Court held "what does it matter which one or how many of the negligent conditions caused the injury or unseaworthy conditions."

Respondent's defaults also included the failure of witness identity, including the identity of an AB seaman, superior to Luttrell, in the lifeboat at the time of the injury. The natural result is the inference that the shipowner has something to conceal, compare *Southern Cross Steamship Co.* v. *Firipes*, 285 F.2d 651 (4 Cir. 1960); *The New York*, 175 U.S. 187, 204.

6. The Solicitor suggests that the weight of the lifeboat was not material. The fact-trier admittedly relied on the authoritative statement of Commander Ronneberg that the boat weighed 9000 pounds and could not be moved. There was ample testimony, including that of the Chief Officer and other witnesses that it could be moved. Certainly when through the inspection book, the lifeboat was identified by reference, and thereafter the documented weight was ascertained from the manufacturer as 3250 pounds, it could have been more easily moved; and much more readily because of the unidentified seaman moving

around in the lifeboat at the time Luttrell was seeking to reverse his entry by jumping to the cabin deck rail from the 2 inch wide lifeboat gunwale.

7. The issue of lack of supervision and dissipation of crew during the drill, concurrently with the stowing of the boat plus crew members also being occupied with getting the vessel underway for sea, was indeed raised at the trial as unseaworthiness and negligence. The concealed official inspection book would have revealed and supported petitioner's contentions and also would have shaken the verity of Ronneberg's in trial testimony. It also would have proven the defaults testified to by the Chief Officer. Ronneberg's testimony was the basis for the fact-trier being led astray to form an improvident decision against the seaman, and in favor of the Sovereign. This adverse opinion now lacks constitutional verity.

The Sovereign omits reference why Commander Ronneberg testified falsely that the vessel was already accepted prior to the injury. On this, the fact-trier relied, which again removes insulation from his opinion adverse to plaintiff. The truth as revealed in the Inspection book was that the acceptance was dated by the Commander on September 13th, a day prior to the injury. The book also reveals that the acceptance was not delivered to the vessel's Master until after the injury sustained by Luttrell. Under the Maritime Laws and regulations of the United States the vessel is not officially accepted or seaworthy until the Coast

Guard accepting officer delivers the acceptance documents into the hands of the Master of the vessel clearing the Master for sailing. In this instance Commander Ronneberg was the official selected by the Sovereign as the accepting and certifying officer.

8. The Solicitor has not answered why the statutory records were not available to petitioner. The records would have revealed the identity and presence of witnesses at their respective locations; and of course their duties at the time. These revelations would have revealed statutory defaults because of the dissipation of the crew at various tasks other than that of the statutory drill. The Chief Officer testified that all crew were supposed to be at their drill stations until after the drill was officially secure. The drill was over, according to the log, at a time after Luttrell's injury. The surfacing of the inspection book after the writers death reveals the "fraud on the court and to this seaman situation." The special counsel for the sovereign had knowledge thereof. This then denied the simple truths to the fact-trier and denied the rudimentary demands of constitutional justice to the seaman ward of this Court.

The concealment of the inspection book also prevented the fact-trier from exercising his lawful responsibilities attendant upon his wardship requirements to this injured seaman. This led the fact-trier to an improperly supported decision because, as the fact-trier stated, Commander Ronneberg had no axe to grind. With the now revelations of the inspection

book, knowingly concealed by the special counsel and others on behalf of the Sovereign for the benefit of the Sovereign and its officials, defaults were indeed apparent to the Sovereign and concealed for the benefit of the Sovereign and to the detriment of the seaman ward of this Court. Obviously the truth was denied to the Court and plaintiff, this makes for "fraud on the court and plaintiff," requiring relief.

CONCLUSION

Based on this Reply and for the reasons in the Peition, it is obvious that the fact-trier and lower courts were led astray from the truths by reasons of the concealments perpetrated by special counsel for the Sovereign and other interested officials. Facts now reveal that the fact-trier's opinion obviously would have favored petitioner. The concealments then created a chain reaction involving the fraud on the court and plaintiff situation directly focusing on the denial of petitioner's constitutional and statutory rights.

This is an alienation of Constitutional responsibilities which, if not corrected by this high tribunal, will be passed to all descendants whose situation is thus one of deprivation.

The Solicitor's memorandum should be stricken as being untimely filed and not responsive to the Petition; and it seeks to purvey and perpetuate untruths in this high court. The Solicitor's Memorandum is unsupportable when viewed with the constitutional rights and statutory obligations enjoyed by the

petitioner and others similarly situated. The concealments by special counsel and other officials are massive, and despite intimidation of counsel herein by special counsel for the Sovereign, were revealed. This is a direct invasion of First and Fifth Amendment obligations and teachings of this tribunal. In these and other matters, the Solicitor has not responded. The Solicitor should not support secrecy in non-secret government obligations; nor should the Sovereign's officials determine that which should be presented to the courts for adjudication in a free democracy. The Sovereign should not be permitted to deny their own facts.

For the foregoing reasons this Court is respectfully requested to grant the Petition to the seaman ward of this Court.

Respectfully submitted,

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